

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.702 of 1997.

SAIYED SIRAJUDDIN HISAMUDDIN & OTHERS

Versus

THE STATE OF GUJARAT

Appearance:

MR YN RAVANI for Petitioner

MS KN VALIMARIMWALA A.P.P. for Respondent

CORAM : MR.JUSTICE M.H.KADRI

Date of Order: 09/06/97

ORAL ORDER

1. Rule. Ms. K.N.Valikarimwala, learned A.P.P. waives service of notice of rule on behalf of the respondent. By consent of the learned advocates, the petition is heard today.

2. The original accused who are the petitioners before this court by filing this petition under Articles 14, 21, 226 and 227 of the Constitution of India have challenged the order dated 30-5-97 passed by the learned Additional Sessions Judge, Bharuch, in Sessions Case No. 2 of 1997, whereby the learned Additional Sessions Judge rejected the application Exh.37 filed by the accused Nos. 1 to 7 and 9 to 12 to recall the complainant Jagdishbhai who was examined at Exh.32 on the record of the case.

3. The petitioners along with other accused are facing trial in the court of learned Addl. Sessions Judge for the offence punishable under Section 395 IPC. The complainant's evidence was recorded at Exh.32 and thereafter evidence of other witnesses were recorded and at the end of trial the petitioners came with the application Exh.37 on 6-2-97 that the complainant Jagdishbhai be recalled as some more evidence have come in their hands and they again want to put questions to the complainant on the basis of that evidence.

4. Learned Addl. Sessions Judge after hearing the arguments of both the sides came to the conclusion that the complainant Jagdishbhai was examined and cross-examined at length. He further observed that other witnesses have turned hostile and with a view to make the complainant turn hostile this application is deliberately filed. In view of the above observations, the learned Addl. Sessions Judge rejected the application Exh.37 to recall the complainant under Section 311 of the Code of Criminal Procedure.

5. Learned counsel for the petitioner has submitted that the complainant had previously filed 2 complains for the offence punishable under Section 395 IPC, and, therefore, the petitioner wanted to place those complaints during the course of examination of the complainant after he is recalled by the order of the court. The arguments of the learned counsel for the petitioners is devoid of any merit. The application Exh.37 does not refer to such complains in the hands of petitioners. The application Exh.37 is filed with an intention to prolong the hearing of the case and to make the complainant turn hostile. I do not find any illegality or irregularity in the order of the learned Addl. Sessions Judge while he dismissed the petitioners' application for recalling the complainant. In view of the foregoing discussion, this Special Criminal Application is meritless and is hereby rejected. Rule discharged.

09-06-97 (M.H. Kadri, J.)